

The Honorable James L. Robart

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEPHANIE FLOHR, an individual,

Plaintiff,

v.

The Boeing Company, et al.,

Defendant.

No. 2:18-cv-00592-JLR

MODEL STIPULATED  
PROTECTIVE ORDER AND ORDER

NOTE ON MOTION CALENDAR:  
OCTOBER 10, 2018

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged:

A. Personal banking and other financial information of the parties.

STIPULATION AND PROTECTIVE ORDER - 1

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1 B. Medical records and other healthcare records as defined by HIPAA (Health Insurance  
2 Portability and Accountability Act of 1996)

3 C. Private business information that would be considered a trade secret.

4 D. Information otherwise provided protection from disclosure under the law.

5 3. SCOPE

6 The protections conferred by this agreement cover not only confidential material (as  
7 defined above), but also (1) any information copied or extracted from confidential material; (2)  
8 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
9 conversations, or presentations by parties or their counsel that might reveal confidential material.  
10 However, the protections conferred by this agreement do not cover information that is in the  
11 public domain or becomes part of the public domain through trial or otherwise.

12 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

13 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
14 or produced by another party or by a non-party in connection with this case only for prosecuting,  
15 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
16 the categories of persons and under the conditions described in this agreement. Confidential  
17 material must be stored and maintained by a receiving party at a location and in a secure manner  
18 that ensures that access is limited to the persons authorized under this agreement.

19 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
20 ordered by the court or permitted in writing by the designating party, a receiving party may  
21 disclose any confidential material only to:

22 (a) the receiving party's counsel of record in this action, as well as employees  
23 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

24 (b) the receiving party and the officers, directors, and employees (including  
25 in house counsel) of the receiving party to whom disclosure is reasonably necessary for this  
26  
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1 litigation, unless the parties agree that a particular document or material produced is for  
2 Attorney's Eyes Only and is so designated;

3 (c) experts and consultants to whom disclosure is reasonably necessary for  
4 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"  
5 (Exhibit A);

6 (d) the court, court personnel, and court reporters and their staff;

7 (e) copy or imaging services retained by counsel to assist in the duplication  
8 of confidential material, provided that counsel for the party retaining the copy or imaging  
9 service instructs the service not to disclose any confidential material to third parties and to  
10 immediately return all originals and copies of any confidential material;

11 (f) during their depositions, witnesses in the action to whom disclosure is  
12 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
13 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
14 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
15 be separately bound by the court reporter and may not be disclosed to anyone except as  
16 permitted under this agreement;

17 (g) the author or recipient of a document containing the information  
18 or a custodian or other person who otherwise possessed or knew the information.

19 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
20 referencing such material in court filings, the filing party shall confer with the designating party  
21 to determine whether the designating party will remove the confidential designation, whether the  
22 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
23 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
24 standards that will be applied when a party seeks permission from the court to file material under  
25 seal.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each party or non-party that designates information or items for protection under this  
4 agreement must take care to limit any such designation to specific material that  
5 qualifies under the appropriate standards. The designating party must designate for  
6 protection only those parts of material, documents, items, or oral or written  
7 communications that qualify, so that other portions of the material, documents, items, or  
8 communications for which protection is not warranted are not swept unjustifiably  
9 within the ambit of this agreement.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
11 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
12 unnecessarily encumber or delay the case development process or to impose unnecessary  
13 expenses and burdens on other parties) expose the designating party to sanctions.

14 If it comes to a designating party's attention that information or items that it designated  
15 for protection do not qualify for protection, the designating party must promptly notify all other  
16 parties that it is withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
18 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
19 stipulated or ordered, disclosure or discovery material that qualifies for protection under  
20 this agreement must be clearly so designated before or when the material is disclosed or  
21 produced.

22 (a) Information in documentary form: (e.g., paper or electronic  
23 documents and deposition exhibits, but excluding transcripts of depositions or other  
24 pretrial or trial proceedings), the designating party must affix the word  
25 "CONFIDENTIAL" to each page that contains confidential material. If only a portion or  
26 portions of the material on a page qualifies for protection, the producing party also must  
27

1 clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
2 margins).

3 (b) Testimony given in deposition or in other pretrial or trial  
4 proceedings: the parties must identify on the record, during the deposition, hearing, or  
5 other proceeding, all protected testimony, without prejudice to their right to so designate  
6 other testimony after reviewing the transcript. Any party or non-party may, within fifteen  
7 days after receiving a deposition transcript, designate portions of the transcript, or exhibits  
8 thereto, as confidential.

9 (c) Other tangible items: the producing party must affix in a prominent  
10 place on the exterior of the container or containers in which the information or item is  
11 stored the word "CONFIDENTIAL." If only a portion or portions of the information or  
12 item warrant protection, the producing party, to the extent practicable, shall identify the  
13 protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
15 failure to designate qualified information or items does not, standing alone, waive the  
16 designating party's right to secure protection under this agreement for such material. Upon  
17 timely correction of a designation, the receiving party must make reasonable efforts to  
18 ensure that the material is treated in accordance with the provisions of this agreement.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 I. **6.1 Timing of Challenges.** Any party or non-party may challenge a  
3 designation of confidentiality at any time. Unless a prompt challenge to a designating party's  
4 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary  
5 economic burdens, or a significant disruption or delay of the litigation, a party does not waive its  
6 right to challenge a confidentiality designation by electing not to mount a challenge promptly  
7 after the original designation is disclosed.

8 **6.2 Meet and Confer.** The parties must make every attempt to resolve any dispute  
9 regarding confidential designations without court involvement. Any motion regarding  
10 confidential designations or for a protective order must include a certification, in the motion or in  
11 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
12 conference with other affected parties in an effort to resolve the dispute without court action. The  
13 certification must list the date, manner, and participants to the conference. A good faith effort to  
14 confer requires a face-to-face meeting or a telephone conference.

15 **6.3 Judicial Intervention.** If the parties cannot resolve a challenge without court  
16 intervention, the designating party may file and serve a motion to retain confidentiality under  
17 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
18 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
19 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
20 other parties) may expose the challenging party to sanctions. All parties shall continue to  
21 maintain the material in question as confidential until the court rules on the challenge.

22 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
23 **LITIGATION**

24 If a party is served with a subpoena or a court order issued in other litigation that compels  
25 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party  
26 must:  
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1 (a) promptly notify the designating party in writing and include a copy of the  
2 subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to  
4 issue in the other litigation that some or all of the material covered by the subpoena or order is  
5 subject to this agreement. Such notification shall include a copy of this agreement; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued  
7 by the designating party whose confidential material may be affected.

8 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
10 material to any person or in any circumstance not authorized under this agreement, the receiving  
11 party must immediately (a) notify in writing the designating party of the unauthorized  
12 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
13 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
14 this agreement, and (d) request that such person or persons execute the "Acknowledgment and  
15 Agreement to Be Bound" that is attached hereto as Exhibit A.

16 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
17 MATERIAL

18 When a producing party gives notice to receiving parties that certain inadvertently  
19 produced material is subject to a claim of privilege or other protection, the obligations of the  
20 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
21 provision is not intended to modify whatever procedure may be established in an e-discovery  
22 order or agreement that provides for production without prior privilege review. Parties shall  
23 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

24 10. NON TERMINATION AND RETURN OF DOCUMENTS

25 Within 60 days after the termination of this action, including all appeals, each receiving  
26 party must return all confidential material to the producing party, including all copies, extracts  
27 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of

1 destruction.

2 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
3 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
4 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
5 work product, even if such materials contain confidential material.

6 The confidentiality obligations imposed by this agreement shall remain in effect until a  
7 designating party agrees otherwise in writing or a court orders otherwise.

8 IT IS SO AGREED AND STIPULATED, THROUGH COUNSEL OF RECORD.  
9

10  
11 DATED this 10<sup>th</sup> day of October, 2018.

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13 Attorneys for Defendants

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PURSUANT TO STIPULATION, IT IS SO ORDERED

DATED this <sup>th</sup> 11 day of October, 2018.

  
The Honorable James L. Robart  
United States District Court Judge

**EXHIBIT A TO STIPULATED PROTECTIVE ORDER**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_

\_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on \_\_\_\_\_, 201\_\_\_\_, in the case of *Stephane Flohrs. v. The Boeing Company, et al.*, 2:19-cv-00592-JLR. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name